

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921. 1922

No. 44

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR,

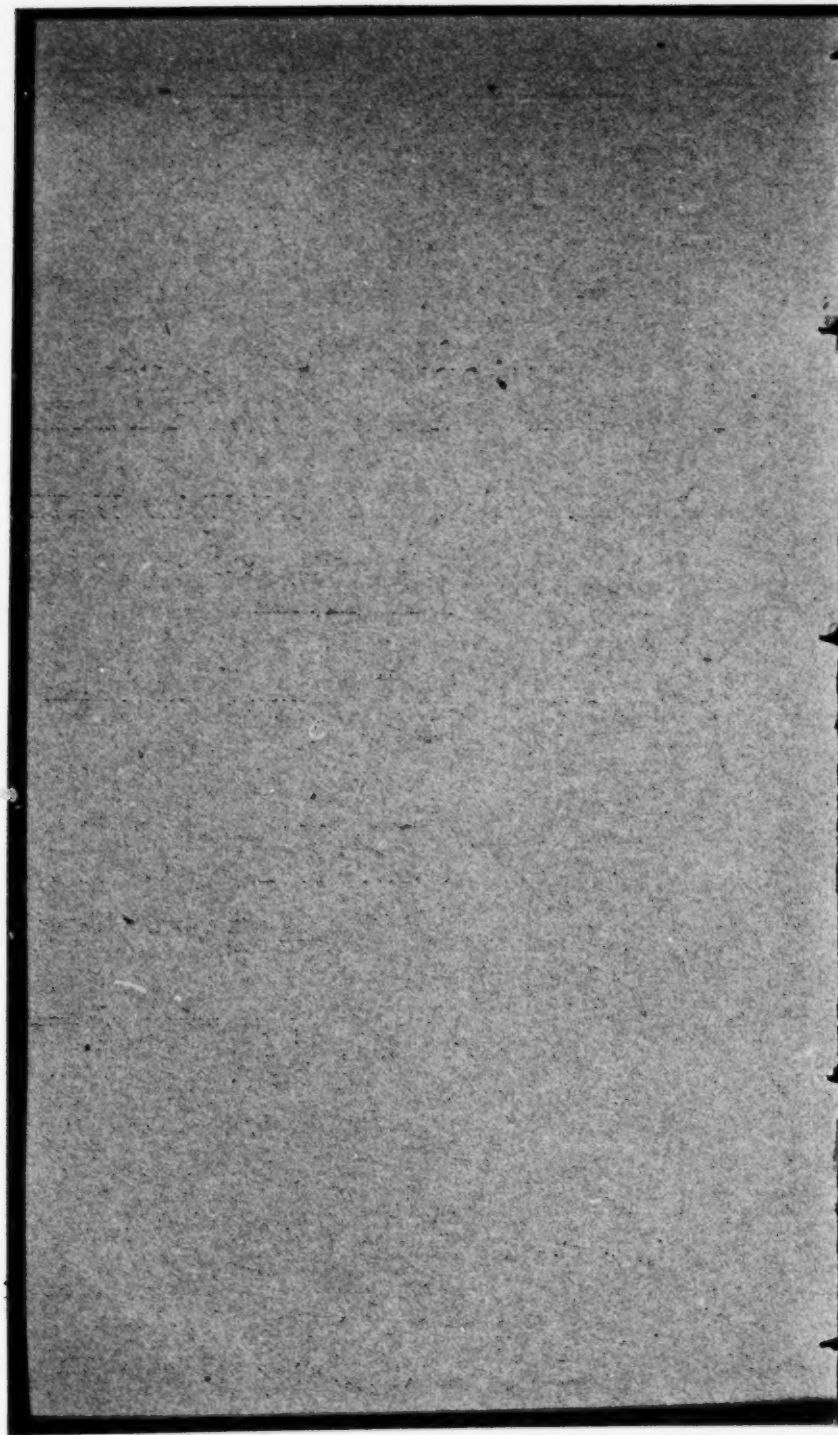
VS.

WONG SING.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH.

FILED MARCH 15, 1921.

(28159)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

THE UNITED STATES OF AMERICA, PLAINTIFF
IN ERROR,

VS.

WONG SING.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF UTAH.

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1 UNITED STATES OF AMERICA,
District of Utah, ss:

At a regular stated term of the District Court of the United States for the District of Utah, central division, begun and held in the court room in the Federal Building at Salt Lake City, on the 8th day of November, in the year of our Lord nineteen hundred and twenty, and the one hundred and forty-fifth of the Independence of the United States of America.

Present: Honorable Tillman D. Johnson, United States district judge for the district of Utah.

TRANSCRIPT OF THE RECORD.

UNITED STATES OF AMERICA	} 6083. Criminal.
<i>vs.</i>	
WONG SING, DEFENDANT.	

Order to file indictment.

Made and entered in minute book said court on the 21st day of August, 1920, which is as follows:

In the matter of report of true bills of indictment by grand jury, April term, 1920.

At this 21st day of August, 1920, come the members of the grand jury for the April term, 1920, of this court, at Salt Lake City, empaneled and sworn to inquire as to all matters within and for
 2 the entire district of Utah, and by their foreman, in open court, present the following true bill of indictment, to wit:

THE UNITED STATES	} Indictment for violation act December 17, 1914.
<i>vs.</i>	
WONG SING.	

(Indorsed: A true bill. Norman Lee, foreman grand jury.)

And thereupon it is ordered that the same be filed by the clerk of this court.

Indictment.

Filed in said court on the 21st day of August, 1920, which is in words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Utah, Central Division.*
 No. 6083. Criminal.

In the District Court of the United States of America, within and for the central division of the district of Utah, in the eighth judicial circuit.

First count.

The grand jurors of the United States of America, drawn from the territory comprising the northern and central divisions of the district of Utah, and sitting in the central division of said district, in the term beginning the twelfth day of April, in the year nineteen hundred and twenty, being first duly impaneled, sworn and charged by said court to inquire within and for the said district of Utah, upon their oaths do present and say:

That, heretofore, to wit, on or about the 14th day of May, A. D. 1920, at about the hour of ten o'clock p. m. of said day, at the building and premises known and described as No. 358 West Second South Street, Salt Lake City, in the State and central division of the district of Utah, and within the jurisdiction of this court, one

3 Wong Sing, whose other and true name is to the grand jurors unknown, then and there being, did then and there knowingly, wilfully, unlawfully, and feloniously have in his possession and under his control, certain derivatives and preparations of opium and coco leaves, to wit, morphine and cocaine, the exact quantity thereof being to the grand jurors unknown; he, the said Wong Sing, then and there having in his possession the said morphine and cocaine for the purpose of sale and distribution; he, the said Wong Sing, being then and there not registered under the provisions of the act of Congress approved December 17, 1914, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, sell, distribute, or give away opium or coco leaves, their salts, derivatives, or preparations, and for other purposes," and its amendments; and he, the said Wong Sing, not having then and there, or theretofore, or at all, paid the special tax provided by said act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second count.

And the grand jurors of the United States of America aforesaid, upon their oaths as aforesaid, do further find and present:

That heretofore, to wit, on or about the 14th day of May, A. D. 1920, at about the hour of ten o'clock p. m. of said day, at the building and premises known and described as No. 358 West Second South Street, Salt Lake City, in the State and central division of the district of Utah, and within the jurisdiction of this court, one Wong Sing, whose other and true name is to the grand jurors unknown, then and there being, did then and there knowingly, wilfully, unlawfully, and feloniously purchase from a person or persons to the grand jurors unknown, certain derivatives and preparations of opium and coco leaves, to wit, morphine and cocaine, the exact quantity thereof being to the grand jurors unknown, said drugs so purchased

4 not being then and there in the original stamped packages, or from the original stamped packages; he, the said Wong Sing, not having then and there obtained said drugs from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner, registered under the provisions of the act of Congress approved December 17, 1914, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, deal in, compound, sell, distribute, or give away opium or coco leaves, their salts, derivatives, or preparations, and for other purposes," and its amendments; and the said purchase at the time and place aforesaid, not being by a patient from a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice; and he, the said Wong Sing, not being then and there registered under the provisions of the said act of Congress, and not having then and there, or theretofore, or at all paid the special tax provided by said act: contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) NORMAN LEE,
Foreman of the Grand Jury.

(Signed) ISAAC BLAIR EVANS,
United States Attorney.

(Signed) HENRY D. MOYLE,
Assit. United States Attorney.

No. 6083. United States District Court, District of Utah.

5 The United States vs. Wong Sing. Indictment for vio. act December 17, 1914. A true bill. (Signed) Norman Lee, foreman grand jury. Filed Aug. 21, 1920. (Signed) John W. Christy, clerk. (Signed) Isaac Blair Evans, U. S. Attorney.

Order, arraignment, and plea.

Made and entered in said court on the 9th day of September, 1920, which being entitled in this cause is as follows:

At this day comes Isaac Blair Evans, United States attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, in his own proper person, and by N. W. Sonnedecker, his attorney, also comes. And defendant is brought to the bar of the court for arraignment, and upon inquiry saith that his true name is Wong Sing, and by his attorney he waives the reading of this said indictment to him, and he is required to plead thereto. Whereupon he answereth and saith that he is not guilty in manner and form as in and by this said indictment he stands charged. And of this he puts himself upon the country and the said United States attorney doth the like.

Order setting case for trial.

Made and entered in said court on the 10th day of December, 1920, which being entitled in this cause is as follows:

- 6 At this day, on motion of Isaac Blair Evans, United States attorney, it is ordered by the court that this cause be set down for trial on the 11th day of January, 1921.

Order plea withdrawn; demurrer.

Made and entered in said court on the 12th day of January, 1921, which being entitled in this cause, is as follows:

At this 12th day of January, 1921, comes Henry D. Moyle, assistant United States attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, in his own proper person, and by N. W. Sonnedecker, his attorney, also comes. And by leave of court defendant withdraws the plea of not guilty heretofore by him entered to this indictment, and in open court demurs to the said indictment for failure to state an offense, and being insufficient, and the same is argued by counsel, and the court, being well advised in the premises, doth sustain said demurrer. And the United States attorney having elected in open court to abide by and to stand on said indictment, it is ordered by the court that said defendant be discharged and that he and his sureties, on his recognition herein, be released and exonerated from all liability thereon.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is considered, ordered, and adjudged by the court that of and from the premises in this said indictment specified said defendant go hence hereof without day.

Judgment.

Filed and entered in the judgment book of said court on the 12th day of January, 1921, which, being entitled in this cause, is as follows:

- In this cause, on the 12th day of January, 1921, plaintiff, appearing by Isaac Blair Evans, United States attorney, and
7 the defendant, by N. W. Sonnedecker, also appearing, and by leave of court defendant withdraws the plea of not guilty heretofore by him entered to this indictment and in open court demurs to the said indictment for failure to state an offense, and being insufficient, and the same is argued by counsel, and the court, being well advised in the premises, doth sustain said demurrer. And the United States attorney having elected in open court to abide by and to stand on said indictment, it is ordered by the court that said defendant be discharged and that he and his sureties, on his recognition herein, be released and exonerated from all liability thereon.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is considered, ordered, and adjudged by the court that of and from the premises in this said indictment specified, said defendant go hence hereof without day.

Petition for writ of error and allowance.

Filed in said court on the 10th day of February, 1921, which being entitled in this court and cause is as follows:

And now comes the United States of America, plaintiff herein, and says:

That on the twelfth day of January, in the year of our Lord one thousand nine hundred and twenty-one, during the November A. D. 1920 term of said court, the above-mentioned district court entered a judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States
8 for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) ISAAC BLAIR EVANS,
United States Attorney for the District of Utah,
Attorney for Plaintiff.

Allowed, Feb. 10, 1921.

(Signed) TILLMAN D. JOHNSON, *District Judge.*

Filed February 10, 1921.

(Signed) JOHN W. CHRISTY, *Clerk.*

Assignment of errors.

Filed in said court on the 10th day of February, 1921, which being entitled in said court and cause is as follows:

The plaintiff in this action, in connection with the petition for a writ of error, makes the following assignment of errors, which plaintiffs avers exists, to wit:

First. The court erred in sustaining the demurrer to the first count of the indictment.

Second. The court erred in sustaining the demurrer to the second count of the indictment.

Third. The court erred in his construction of the language of section 1006 of the revenue act of February 24, 1919, c. 18.

Fourth. The court erred in entering judgment in favor of defendant and against the plaintiff.

Wherefore, plaintiff prays that the judgment of said district court be reversed.

(Signed) ISAAC BLAIR EVANS,
United States Attorney for the District of Utah,
Attorney for Plaintiff.

Filed February 10, 1921.

(Signed) JOHN W. CHRISTY, *Clerk.*

Order allowing writ of error.

Filed and entered in said court on the 10th day of February, 1921, which being entitled in this court and cause, is as follows:

This tenth day of February, A. D. 1921, during the November, A. D. 1920, term of said court, comes the plaintiff by Isaac Blair Evans, Esquire, United States attorney for the district of Utah, plaintiff's attorney, and files herein and presents to the court plaintiff's petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by plaintiff, praying also that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error; but plaintiff according to law is relieved from giving bond.

This tenth day of February, A. D. 1921.

(Signed) **TILLMAN D. JOHNSON,**
Judge of the District Court of the United
States for the District of Utah.

Filed and entered February 10, 1921.

(Signed) **JOHN W. CHRISTY, Clerk.**

Certificate of district judge.

Filed in said court on the 10th day of February, 1921, which being entitled in this court and cause, is as follows:

The foregoing cause came on regularly for trial on the twelfth day of January, A. D. 1921, whereupon defendant, by his counsel, moved orally to withdraw the plea of not guilty theretofore by
 10 him entered to the indictment, and leave to withdraw the plea having been granted, defendant by his counsel orally demurred to the indictment upon the ground that neither of the two counts of said indictment stated facts sufficient to constitute an offense against the United States.

The first count of the indictment is based upon section eight of the act of Congress of December 17, 1914, commonly called the Harrison Anti-Narcotic Act. I sustained the demurrer to this count upon the authority of United States vs. Jin Fuey Moy, 241 U. S., 394.

The second count of the indictment is based upon the amended Harrison Anti-Narcotic Act contained in section 1026 of the revenue act of February 24, 1919, C. 18 (40 Stat., 1130). The language upon which the second count of the indictment is predicated reads:

"It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package * * *."

I construed the word "person" in the foregoing language to mean

the persons enumerated in the first paragraph of section 1006, namely, "every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof * * *." I sustained the demurrer to the second count of the indictment because it contained no appropriate allegation giving effect to the above construction placed upon the word "person" and hence fell within the rule in the *Jin Fuey Moy* case; otherwise said amendment would be unconstitutional.

I, the undersigned, judge of the District Court of the United States in and for the District of Utah, hereby certify that in sustaining the demurrer to the second count of the indictment the sole question considered and determined by the court was the proper construction to be placed upon the word "person" in the language of the statute above mentioned beginning, "It shall be unlawful for any person to purchase," etc., upon which said second count was based, and which is hereinbefore quoted more fully, and that treating the demurrer as presenting this question of construction, the demurrer was sustained only for the reason above stated.

This certificate is made a part of the record and will be certified and sent up as part of the proceedings.

This tenth day of February, A. D., 1921.

(Signed) **TILLMAN D. JOHNSON,**
Judge of the United States District Court
in and for the District of Utah.

Filed February 10, 1921.

(Signed) **JOHN W. CHRISTY, Clerk.**

Procipe for transcript of record.

Filed in said court on the 24th day of February, 1921, which being entitled in this court and cause, is as follows:

The clerk of court will prepare transcript of record in the above entitled cause upon writ of error to the Supreme Court of the United States, and include therein the following:

1. Order to file indictment.
2. The indictment.
3. The arraignment and plea.
4. Order setting case for trial January 11, 1921.
5. Order to withdraw plea and leave granted to file demurrer.
6. The judgment.
7. Petition for writ of error.
8. Assignment of errors.
9. Order allowing writ of error.
- 12 10. Writ of error.
12. Citation in error.
13. Judge's certificate.

14. Præcipe for transcript.

15. Clerk's certificate.

(Signed)

ISAAC BLAIR EVANS,
United States Attorney,
Attorney for Plaintiff.

Due service of the within præcipe is hereby admitted at Salt Lake City, Utah, in said district of Utah, this 24th day of February, A. D., 1921.

(Signed)

N. W. SONNEDECKER,
Attorney for Defendant in Error.

Filed Feby. 24, 1921.

(Signed)

JOHN W. CHRISTY, *Clerk.*

13 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the District Court of the United States for the District of Utah, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America, plaintiff, and Wong Sing, defendant, a manifest error has happened, to the great damage of the said United States of America, as by plaintiff's complaint appears. We being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the fourth day of April next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, that of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, the 10th day of February, in the year of our Lord one thousand nine hundred and twenty-one, and of the Independence of the United States of America the one hundred and forty-fifth year.

[SEAL.]

JOHN W. CHRISTY,

Clerk of the District Court of the United States
for the District of Utah.

Allowed this February 10, A. D. 1921, by

TILLMAN D. JOHNSON,

United States District Judge for the District of Utah.

14 In the United States District Court for the District of Utah.

UNITED STATES OF AMERICA, PLAINTIFF
in error,

vs.

WONG SING, DEFENDANT IN ERROR.

Citation. No. 6083. Criminal.

UNITED STATES OF AMERICA, ss.:

To Wong Sing, defendant in error above named, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington on the fourth day of April next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Utah, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned should not be corrected and why justice should not be done to the parties in that behalf.

Witness the honorable Edward Douglas White, Chief Justice of the United States, this 10th day of February, A. D. 1921, and of the Independence of the United States the one hundred and forty-fifth year.

TILLMAN D. JOHNSON,
United States District Judge.

Attest:

[SEAL.]

JOHN W. CHRISTY, *Clerk.*

Due service of the within citation is hereby admitted at Salt Lake City, Utah, in said district of Utah, this 10th day of February, A. D. 1921.

N. W. SONNEDECKER,
Attorney for Defendant in Error.

Lodges in clerk's office February 10, 1921.

JOHN W. CHRISTY, *Clerk.*

15

Certificate of Clerk.

UNITED STATES OF AMERICA,

District of Utah, ss.:

I, John W. Christy, clerk of the District Court of the United States for the District of Utah, do hereby certify that the foregoing pages numbered from one to twelve, both inclusive, contain a full, true, complete, and correct copy and transcript of the record, proceedings, and papers called for in the præcipe filed herein for a transcript of the record in that certain cause wherein the United States of America is plaintiff and Wong Sing is defendant, numbered 6083, criminal, on the dockets of said court, as full, true, com-

plete, and correct as the originals thereon now remain on file and of record in my office, omitting the following papers and proceedings not specified in said præcipe, to wit:

Oct. 30, 1920. Order set for trial November 23, 1920.

Nov. 23, 1920. Præcipe, subpoena for witnesses, and return order continued for trial.

I further certify that the original writ of error and original citation in this cause are hereunto annexed and transmitted herewith.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Salt Lake City, in said district, this 5th day of March, in the year of our Lord nineteen hundred and twenty-one and the one hundred and forty-fifth year of the Independence of the United States of America.

JOHN W. CHRISTY, *Clerk,*

United States District Court, District of Utah.

(Indorsed on cover: File No. 28159. Utah, D. C. U. S. Term No., 252. The United States of America, plaintiff in error, vs. Wong Sing. Filed March 15th, 1921. File No. 28159.)



In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, PLAINTIFF tiff in error, V. WONG SING.	}	No. 44.
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*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF UTAH.*

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF CASE.

The defendant in error was indicted in the United States District Court for the District of Utah in two counts (pp. 1-3). Only the second count is material on this writ of error. That count (pp. 2, 3) alleged that the defendant knowingly and unlawfully purchased, from a person or persons unknown, morphine and cocaine, the said drugs so purchased not being then and there in the original stamped packages, "or from the original stamped packages," in violation of section 1 of the act of December 17, 1914, c. 1, 38 Stat. 785, Comp. Stats. section 6287g, as amended by section 1006 of the General

Internal Revenue Law of February 24, 1919, c. 18, 40 Stat. 1130.

The district court sustained a demurrer to the indictment (p. 4) and certified (pp. 6, 7) that such action was taken solely by reason of the construction placed by the court on the words "any person" in that portion of section 1006 of the act of February 24, 1919, c. 18, *supra*, on which the second count of the indictment was based, viz, that said words "any person" were limited to those persons, being importers, producers, dealers, or physicians who, by the terms of the original act of December 17, 1914, c. 1, *supra*, substantially reenacted by the prior portion of section 1006 of the act of February 24, 1919, c. 18, were required to register and pay a special tax, this construction (it was claimed) being justified by the decision of this court in *United States v. Jin Fuey Moy*, 241 U. S. 394. Accordingly, since the second count of the indictment contained no allegation that the defendant was a person required to register and pay a special tax, the demurrer to said count was sustained.

To the judgment sustaining the demurrer this writ of error was sued out under the authority of paragraph 2 of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, Comp. Stat., section 1704.

THE RELEVANT STATUTES.

Section 1006 of the General Revenue Act of February 24, 1919, c. 18, 40 Stat. 1140:¹

SEC. 1006. That section 1 of the Act of Congress approved December 17, 1914, is hereby amended to read as follows:

"SECTION 1. That on or before July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district, his name or style, place of business and place or places where such business is to be carried on, and pay the special taxes hereinafter provided;

"Every person who on January 1, 1919, is engaged in any of the activities above enumerated, or who between such date and the passage of this Act first engages in any of such activities, shall within 30 days after the passage of this Act make like registration, and shall pay the proportionate part of the tax for the period ending June 30, 1919; and

"Every person who first engages in any of such activities after the passage of this Act shall immediately make like registration and pay the proportionate part of the tax for the period ending on the following June 30th;

"Importers, manufacturers, producers, or compounders, \$24 per annum; wholesale

¹ The italicized portion is that upon which the second count in the indictment in the present case was based, and was new legislation, entirely additional to the provisions of section 1 of the Harrison Narcotic Act of December 17, 1914, c. 1.

dealers, \$12 per annum; retail dealers, \$6 per annum; physicians, dentists, veterinary surgeons, and other practitioners lawfully entitled to distribute, dispense, give away, or administer any of the aforesaid drugs to patients upon whom they in the course of their professional practice are in attendance shall pay \$3 per annum.

"Every person who imports, manufactures, compounds, or otherwise produces for sale or distribution any of the aforesaid drugs shall be deemed to be an importer, manufacturer or producer.

"Every person who sells or offers for sale any of said drugs in the original stamped packages, as hereinafter provided, shall be deemed a wholesale dealer.

"Every person who sells or dispenses from original stamped packages, as hereinafter provided, shall be deemed a retail dealer: *Provided*, That the office, or if none, the residence, of any person shall be considered for the purpose of this Act his place of business; but no employee of any person who has registered and paid special tax as herein required, acting within the scope of his employment, shall be required to register and pay special tax provided by this section: *Provided further*, That officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the business herein described, shall not be required to register, nor pay special tax, nor stamp the aforesaid drugs as hereinafter pre-

scribed, but their right to this exemption shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

“It shall be unlawful for any person required to register under the provisions of this Act to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer, or give away any of the aforesaid drugs without having registered and paid the special tax as imposed by this section.

“That the word ‘person’ as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, as far as necessary, are hereby extended and made applicable to this section.

“That there shall be levied, assessed, collected, and paid upon opium, coca leaves, any compound, salt, derivative, or preparation thereof, produced in or imported into the United States, and sold, or removed for consumption or sale, an internal-revenue tax at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce, such tax to be paid by the importer, manufacturer, producer, or compounder thereof, and to be represented by appropriate stamps, to be provided by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the stamps herein provided shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof.

"The tax imposed by this section shall be in addition to any import duty imposed on the aforesaid drugs.

"It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by this section shall be prima facie evidence of liability to such special tax: Provided, That the provisions of this paragraph shall not apply to any person having in his or her possession any of the aforesaid drugs which have been obtained from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner registered under this act; and where the bottle or other container in which such drug may be put up by the dealer upon said prescription bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person writing said prescription; or to the dispensing, or administration, or giving away of any of the aforesaid drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional

practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this act of the drugs so dispensed, administered, distributed, or given away.

“And all the provisions of existing laws relating to the engraving, issuance, sale, accountability, cancellation, and destruction of tax-paid stamps provided for in the internal-revenue laws are, in so far as necessary, hereby extended and made to apply to stamps provided by this section.

“That all unstamped packages of the aforesaid drugs found in the possession of any person, except as herein provided, shall be subject to seizure and forfeiture, and all the provisions of existing internal-revenue laws relating to searches, seizures, and forfeitures of unstamped articles are hereby extended to and made to apply to the articles taxed under this Act and the persons upon whom these taxes are imposed.

“Importers, manufacturers, and wholesale dealers shall keep such books and records and render such monthly returns in relation to the transactions in the aforesaid drugs as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations require.

“The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect.”

Portions of section 2 of the Harrison Narcotic Act of December 17, 1914, c. 1:²

That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a phy-

² The italicized portion is that involved in *Doremus v. United States*, 249 U. S. 86, and the first certified question in *Webb v. United States*, 249 U. S. 94.

sician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: *Provided, however*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

Section 8 of the Harrison Narcotic Act of December 17, 1914.³

Sec. 8. That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of section one of this Act: *Provided*, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, district, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under

³ This was the section involved in the case of *United States v. Jin Fuey Moy*, 241 U. S. 394.

this Act; and the burden of proof of any such exemption shall be upon the defendant.

The assignment of errors raises the question hereinafter discussed (p. 5).

ARGUMENT.

The question here involved is a narrow one of statutory construction and requires no extended discussion. It involves merely the effect upon the Harrison Narcotic Act of the amendment made by section 1006 of the internal revenue law of February 24, 1919, c. 18 (40 Stat. 1130), considered in the light of the decisions of this court in the *Doremus* and *Webb* cases, *infra*. The law, with the amendment indicated, has been set forth, *supra*.

The original Harrison Narcotic Act of December 17, 1914, provided in section 1 that all persons importing, producing, or dealing in drugs should register and pay a special tax. That it should be unlawful for any person required to register to produce, import, manufacture, etc., the drugs without having registered and paid the tax. Section 2 provided that it should be unlawful for any person to sell, etc., the drugs except in pursuance of a written order on a form to be issued by the Commissioner of Internal Revenue, but excepted from this provision the dispensing or distribution of the drugs by druggists and physicians under certain circumstances. Section 8 then provided that it should be unlawful for

any person *not registered under the act* to have the drugs in his possession or control.

In the case of *United States v. Jin Fuey Moy*, 241 U. S. 394, this court held, in construing section 8 of the act of December 17, 1914, that the words "any person not registered" in the section can not be taken to mean any person in the United States, but must be taken to refer to persons of the class with which the statute undertakes to deal, that is, the persons who are required to register by section 1. This conclusion was based upon the consideration that a construction of the words "any person" which extended their meaning beyond the classes thus limited would make the constitutionality of the statute doubtful. That decision, however, clearly applied only to the case then before the court, namely, the application of that portion of the original act, section 8, which punished the mere possession or control of the drugs.

Thereafter this court had before it the cases of *Doremus v. United States*, 249 U. S. 86, and *Webb v. United States*, 249 U. S. 96, which were argued and decided together.

In the *Doremus* case a demurrer to an indictment for violation of section 2 of the Harrison Act had been sustained upon the ground that the act was not a revenue measure, but was an invasion of the police power of the States.

This court reversed the judgment below and held the act to be a revenue measure and constitutional.

After referring to its decision in the *Jin Fuey Moy* case, 241 U. S. 394, the court said:

The provisions of § 2 to which we have referred, aim to confine sales to registered dealers and to those dispensing the drugs as physicians, and to those who come to dealers with legitimate prescriptions of physicians. Congress, with full power over the subject, short of arbitrary and unreasonable action, which is not to be assumed, inserted these provisions in an act specifically providing for the raising of revenue. Considered of themselves, we think they tend to keep the traffic aboveboard and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by the Federal law. This case well illustrates the possibility which may have induced Congress to insert the provisions limiting sales to registered dealers, and requiring patients to obtain these drugs as a medicine from physicians or upon regular prescriptions. Ameris being, as the indictment charges, an addict, may not have used this great number of doses for himself. He might sell some to others without paying the tax; at least Congress may have deemed it wise to prevent such possible dealings because of their effect upon the collection of the revenue.

In the *Webb* case, Webb and another had been convicted, under section 37 of the Criminal Code, for a conspiracy to violate section 2 of the Harrison

Act. The Circuit Court of Appeals certified to this court three questions, the first and second being:

1. Does the first sentence of § 2 of the Harrison Act prohibit retail sales of morphine by druggists to persons who have no physician's prescription, who have no order blank therefor, and who can not obtain an order blank because not of the class to which such blanks are allowed to be issued?

2. If the answer to question one is in the affirmative, does this construction make unconstitutional the prohibition of such sale?

The Court in answering the questions said (p. 99):

What we have said to the construction and purpose of the act in No. 367 (The *Doremus* case) plainly requires that question one should be answered in the affirmative. Question two should be answered in the negative for the reasons stated in the opinion in No. 367.

So in the *Doremus* case it was held that the provisions of section 2 aimed to confine sales to registered dealers, to those dispensing the drugs as physicians, and to those who came to dealers with legitimate prescriptions; that those provisions tended to keep the traffic aboveboard and subject to inspection by the revenue officers, and tended to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax; while the *Webb* case affirmed the constitutionality of the act when construed to apply to others than those required to register under its terms.

It is therefore settled, that the prohibitions of the act with respect to *trafficking* in narcotics, as distinguished from the mere possession, apply to all persons, and not merely to those required to register.

These two decisions free the present case from the difficulty which caused the court below to sustain the demurrer to the indictment on the authority of the *Jin Fuey Moy* case. When the amendment of Feb. 24, 1919, is examined in the light of these cases, the meaning and application of the entire act as amended becomes clear.

The principal part of this amendment and its vital feature as a change in the previous law is that a tax was laid directly upon opium, cocoa leaves, and their derivatives in addition to the tax upon the dealers, and provided that the payment of this tax should be evidenced by stamps to be affixed to the container so as to seal it securely.

As amended, therefore, the act defines wholesale dealers as those who dealt *in* the original stamped packages and retail dealers as those who deal *from* the original stamped packages. It then provides that it shall be unlawful for any person to purchase or sell these drugs except *in* or *from* the original stamped packages. This plainly is a general provision and necessarily applies to any one dealing in them. This is borne out by the proviso which excepts persons who obtain the drugs from the registered dealer pursuant to a prescription, or as a patient.

Since the *Webb* case held that the prohibition against purchasing from a druggist extended to a person who had no prescription or order blank, and could not obtain one because not of the class to which blank might be issued, it is plain that the prohibition against *traffic* as distinguished from *mere possession* (the *Jin Fuey Moy* case) is absolute except in the cases specifically exempted from the provisions of the act.

The only persons who could be expected to deal in the drugs in violation of the prohibition would be those persons who are not entitled to register and pay the tax and consequently could not legitimately deal in such packages. As the court pointed out in the *Doremus* case, a drug addict himself might not necessarily use the great number of doses mentioned in the indictment. He might sell some to others without paying the tax, and Congress may have deemed it wise to prevent such possible dealings because of their effect upon the collection of the revenue. If the act is valid under the taxing clause of the Constitution as imposing a tax upon narcotic drugs and those who deal in them, and if Congress has the right to require all legitimate dealers to register and pay a tax and furthermore to provide that the payment of the tax upon the drugs themselves shall be evidenced by stamps placed upon the container, then surely it has power to make it a crime to traffic in these drugs *in or from* unstamped packages.

Thus we find in the act as it now stands a clear and comprehensive scheme for deriving revenue from the traffic in narcotic drugs. Those who deal in them must register and pay a tax, and all those not thus registered are forbidden to deal in them under severe penalties. The drugs themselves are taxed; stamps showing the payment of the tax must be affixed to the package in which they are sold, and the sale of them in unstamped packages is forbidden; and finally, every person, whether registered or not, who knowingly keeps or sells them *in* or *from* unstamped packages is guilty of a crime.

If Congress has power to prohibit the traffic by unauthorized persons, it surely has the power to extend the prohibition to traffic in unstamped packages, and that is the offense with which the defendant in error is charged.

The law is not dissimilar to the various internal-revenue statutes relating to the traffic in liquors and tobacco.

We suppose there is no question of the power of Congress to levy an internal-revenue tax upon opium and cocoa and their derivations, as upon liquors, beer, tobacco, snuff, etc. These and many other commodities have been subjected to a stamp tax.

Without referring in detail to the numerous statutes, it is sufficient to say that it is no new thing in internal-revenue legislation to require commodities to be sold in stamped packages and to make the

purchase or sale of them in any other way a criminal offense. It seems unnecessary to argue that the purchase and sale of narcotics in or from unstamped packages tends directly to deprive the United States of the revenue which it has the right to derive from the sale of the stamps, and, therefore, a law making it criminal to do so is appropriate and plainly adopted to accomplish a purpose clearly within the power of Congress.

McCulloch v. Maryland, 4 Wheat. 423.

CONCLUSION.

The judgment of the Court below should, therefore, be reversed.

JAMES M. BECK,
Solicitor General.

ALFRED A. WHEAT,
Special Assistant to the Attorney General.

OCTOBER, 1922.

UNITED STATES v. WONG SING.

**ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH.**

No. 44. Argued October 11, 1922.—Decided October 23, 1922.

1. Under the Revenue Act of February 24, 1919, c. 18, § 1006, 40 Stat. 1130, in order that a person may be liable criminally as a purchaser of narcotic drugs it is not necessary that he be of the class who must register and pay special taxes. P. 20.
2. The act, as so construed, is constitutional, within the revenue power. P. 21.

Reversed.

Error to a judgment of the District Court quashing an indictment upon demurrer.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

No appearance for defendant in error.

Mr. Justice McKenna delivered the opinion of the Court.

Error to review the action of the District Court in dismissing an indictment against defendant in error. The indictment was in two counts. The first count charged that Wong Sing feloniously had in his possession and under his control, at a specified date, certain derivatives and preparations of morphine and cocaine for the purpose of sale and distribution, he not being registered under the provisions of the Act of Congress approved

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Opinion of the Court.

December 17, 1914, c. 1, 38 Stat. 785, and its amendments, and not having paid the special tax required by the act.¹

The second count charged that Wong Sing, at a specified date and time on such date, and at a specified place in Salt Lake City, within the jurisdiction of the court, knowingly, wilfully, unlawfully and feloniously purchased from a person or persons unknown to the grand jurors, morphine and cocaine, the exact quantity being unknown to the grand jurors; the said drugs not being in the original stamped packages, or from the original stamped packages; he not having then and there obtained the drugs from a registered dealer in pursuance of a prescription, written for legitimate medical uses by a practitioner registered under the Act of December 17, 1914, and its amendments; and the purchase not being by a patient from a registered practitioner in the course of his professional practice, and he, Wong Sing, not being then and there registered under the provisions of the act of Congress, and not having then and there, or theretofore, or at all, paid the special tax provided by the act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Wong Sing, upon being arraigned, pleaded not guilty, but subsequently withdrew the plea and demurred to the indictment "for failure to state an offense, and being insufficient." The demurrer was sustained and he was discharged from all liability thereon.

The court made a certificate, to be part of the record and proceedings, that the first count of the indictment was based upon § 8 of the Act of Congress of December 17, 1914, commonly called the Harrison Anti-Narcotic

¹ Counsel for the United States say that only the second count is material on this writ of error. The first count, however, is a part of the representation of the case.

Act, and that he sustained the demurrer to that count upon the authority of *United States v. Jin Fuey Moy*, 241 U. S. 394. And the court further certified that the second count of the indictment was based upon the amended Harrison Anti-Narcotic Act, contained in § 1006 of the Revenue Act of February 24, 1919, c. 18, 40 Stat. 1130, and that the count was predicated upon the following provisions: "It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package . . ."; and that he construed "the word 'person' in the foregoing language to mean the persons enumerated in the first paragraph of section 1006, namely, 'every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business and place or places where such business is to be carried on, and pay the special taxes hereinafter provided.'"

The demurrer was sustained, it was further certified, because the second count contained no appropriate allegation giving effect to the word "person" and hence fell within the ruling in the *Jin Fuey Moy Case*; otherwise, it was said, the amendment would be unconstitutional. And further, that the demurrer was treated as presenting that question of construction and was sustained only for that reason.

The construction by the court of § 1006 constitutes the question in the case. It is attacked by the United States as not justified, and *United States v. Doremus*, 249 U. S. 86, and *Webb v. United States*, 249 U. S. 98, are cited.

We are unable to concur with the District Court. The provisions quoted by the court have a certain relation, but they have also a certain independence. The first

makes it "unlawful for any person to purchase" the drugs; the second enumerates other persons who have a larger connection with the drugs and requires them to register the fact and pay the tax prescribed. There could be no object in requiring a purchaser of the drugs to register but it fulfilled the purpose of the law to forbid a purchase "except in the original stamped package or from the original stamped package." The requirement fortifies the other injunctions of the statute.

In *United States v. Doremus*, and *Webb v. United States*, it was decided that the power of Congress exerted through the Act of 1914, though the act might be denominated a revenue measure, could, as a complement to it, make criminally unlawful the sale, barter or exchange of narcotic drugs except under certain prescribed conditions designed to make it effective as a revenue measure. The principle of the decision applies to the Act of 1919, upon which count two is based. If the law can put conditions upon sellers, it can put conditions with a like purpose upon purchasers, which is done here. Therefore, the apprehension of the District Court, if it should be so held, that the act would be unconstitutional under the decision in *United States v. Jin Fuey Moy*, 241 U. S. 394, was not justified. There is another distinction between the *Jin Fuey Moy Case* and this. In that case, which was under the Act of 1914, it was intimated that the persons affected by the act received definition from the requirement of registration. This case is under the Act of 1919, and it, as we have said, does not require registration.

It follows that the judgment of the District Court must be and it is,

Reversed and cause remanded for further proceedings in accordance with this opinion.